**THE HON'BLE SMT JUSTICE T. MEENA KUMARI**

**AND**

**THE HON'BLE SRI JUSTICE P. LAKSHMANA REDDY**

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**WRIT PETITION No. 6462 of 2004**

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**ORAL ORDER :(per Smt. T. Meena Kumari,J)**

This Writ Petition is filed challenging the interim order, dated 13-11-2003, passed in O.A.No.119 of 2001, by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

The facts in brief are that the respondents herein were employed as Geophysicists in the Geological Survey of India, a subordinate Department of Ministry of Mines. According to the petitioner-Department, in the stream of Geophysicist, the post of Assistant Geophysicists is a Group-B post and the next grade in the said cadre is the post of Geophysicist (Jr.) Group-A. It is stated that the promotion from Assistant Geophysicist (Junior) is by two modes viz., (1) by direct recruitment through Union Public service Commission and by constituting a D.P.C. The recruitment rules provided 1:1 ratio by selection by seniority and other by Department Promotion channel. According to the petitioner-Department, as per the recruitment rules, the eligible Assistant Geophysicists, who have completed the prescribed three years residency period, would be considered for promotion in the ratio of 50% each (50% in-service candidates and 50% direct recruitment). It is stated that there were about 31 vacancies of Geophysicists (Jr.) under the promotion cadre during the years 1988-98 and the said posts could not be filled up in view of Official Memorandum, dated 03.05.1993, of the Ministry of Finance, and hence, the Ministry has been addressed by the authorities seeking revival of the said 31 posts and the matter was pending consideration. While so, the respondents herein filed O.A.No.119 of 2000 before the Central Administrative Tribunal, Hyderabad Bench, seeking a direction to the authorities to revalidate and fill up all the vacancies of the Geophysicists (Jr.), which were lapsed for not conducting the Department Promotion Committee (for short "DPC") and also to convert the vacancies under the direct recruitment quota for

which no recruitment was made from the year, 1984 and to consider their cases for promotion to the next higher post with the related benefits. Further, in the reply filed by the department before the Tribunal in M.A.No.715 of 2001, it was stated that as per O.M., dated 13.11.2001 based on the recommendations of the DPC, promotions were ordered for 27 Assistant Geophysicists to Geophysicists (Jr.) and the said promotions will take effect from the date of assumption of charge in the post of Geophysicist (Jr.). It was further submitted that four posts (SC-2 and ST-2) of Geophysicists in the SC., S.T. category could not filled up due to non-availability of Schedule Caste, Schedule Tribe Officers. It was further stated that except applicant No.1, other applicants were not within the zone of consideration.

By the impugned order, the Tribunal while disposing of Central Administrative Tribunal by its order, dated 13.11.2003, rejected the request of the applicants for one time conversion of direct recruitment quota into DPC recording the findings that the relief sought by the applicants in the O.A. has already been granted in view of promotion orders, dated 13.11.2001. The Tribunal further directed that the cases of the applicants should be considered and adjusted against the unfilled vacancies of the respective years when no DPC was held for the purpose of their seniority and also directed that on promotion they may be allocated to the respective years of the seniority on proforma basis which would have been due to them if the DPC held at that time. Aggrieved by this, petitioner-Department filed this writ petition.

Learned counsel for the Department contended that in view of the instructions issued in Office Memorandum.3.5.1993, they could not convene the D.P.C. and promote the respondents to the next higher post. He, therefore, contended that the delay in conducting the D.P.C. is neither willful nor wanton. He further contended that the Tribunal having noticed the fact that the regular D.P.C. has already been constituted in terms of the Rules and promotions have been ordered by O.M. dated 13.11.2001, it ought not to have ordered for adjusting the respondents/applicants on proforma/notional promotions from the respective years when the vacancies arose with consequential benefits. It was further contended that the Tribunal failed to note that as per the recruitment rules, the respondents/applicants are only entitled for consideration of promotion, and once such consideration is done in 2001, they are not entitled for the retrospective proforma promotions, and hence, he sought to set aside the order of the Tribunal.

On the other hand, learned counsel for the respondents supported the order of the

Tribunal and submitted that the impugned order does not require any interference.

We have heard the learned counsel for the parties and perused the order impugned in this writ petition.

The Tribunal on a perusal of the facts as placed before it found that the vacancies in the stream of Geophysicists both under the DPC quota as well as the Direct Recruitment quota could not remain filled from the years 1984-85 and 1988-89. It also found that the recruitment against Direct Recruitment quota was in a worse situation and therefore it opined that the request of the applicants for one time conversion of the last Direct Recruitment quota into DPC quota may not meet the ends of justice and if really there was enough work, this quota could also be filled up by taking action for recruiting candidates against the said quota. As regards, revalidation of 31 posts for promotion under DPC quota in the cadre of Geophysicist (Junior), the Tribunal found that since the approval of the Ministry of Finance had been conveyed and further action has been taken and to that extent, the relief sought by the Respondents-applicants remain fulfilled. The Tribunal while disposing of the O.A. observed that with a view to protect the seniority of the respondent-applicants, we direct that proforma promotion should be given to the Geophysicists on their promotion, according to their seniority and eligibility with retrospective effect, adjusting them against the vacancies of the respective years when they qualified for these posts. The Tribunal, in order to protect the consequential benefits of the respondent-applicants in future promotions as per seniority and eligibility, which accrue to them on such retrospective seniority, directed the Department to reallocate their notional promotions for respective years when they would have got these promotions in normal course, but for the fact non-convening of D.P.C., for the respective years. As regards one time adjustment against the Direct Recruitment quota, the Tribunal observed that it would be unfair to grant such a relief, since even according to the contentions of the applicants themselves, direct recruitment as per the vacancies in the quota had also not taken place. The Tribunal however felt that it would be fair and just that against the DPC quota, the Officers who had missed their promotions during the respective years when it was due and when they were qualified and eligible for it, were directed to be given to them on notional basis from the years they were eligible and suitable for those posts. It was further observed that on promotion, the applicants may be allocated the respective years of seniority through proforma promotion of respective years, which would have been due to

them had the DPC been held regularly for those respective years, and in case they were eligible and qualified and found fit for the same.

Having gone through the impugned order passed by the Tribunal, we are of the view that the Tribunal has given cogent and convincing reasons for issuing such directions. In the circumstances, we do not find any reason to interfere with the said order passed by the Tribunal in exercise of writ jurisdiction under Article 226 of the Constitution of India.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

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**T. MEENA KUMARI, J**

Date:12.09.2005

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**P. LAKSHMANA REDDY, J**

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